

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

ERIC BAEZ,

Plaintiff,

v.

JENNIFER MOONEY,
Correctional Industries, et al.,

Defendants.

Case No. 1:20-cv-9-SPB-RAL

MEMORANDUM ORDER

The within civil rights action was commenced on January 15, 2020 when the Plaintiff, an inmate at SCI-Albion, filed his motion for leave to proceed *in forma pauperis*, ECF No. 1, accompanied by a complaint that was lodged by the clerk of court. ECF No. 1-1. The case was referred to United States Magistrate Judge Richard A. Lanzillo for report and recommendation (“R&R”) in accordance with the Magistrate Judges Act, 28 U.S.C. §636(b)(1), and the Local Rules for Magistrate Judges. Judge Lanzillo subsequently granted Plaintiff’s renewed application for leave to proceed *in forma pauperis*, ECF Nos. 5 and 6, and the complaint was filed of record on April 1, 2020. ECF No. 7.

In his complaint, Plaintiff asserts claims under 42 U.S.C. §1983 against four prison officials who are employed at SCI-Albion. Plaintiff appears to be alleging violations of his rights under the First, Eighth and Fourteenth Amendments to the U.S. Constitution.

On July 6, 2021, the Defendants filed a motion to dismiss the complaint pursuant to Rule 12(b)(1) and/or 12(b)(6) of the Federal Rules of Civil Procedure. ECF Nos. 17 and 18. Plaintiff responded on September 16, 2020, ECF No. 26.


On February 8, 2021, Magistrate Judge Lanzillo issued an R&R, ECF No. [30], recommending that that the Court grant the Defendants' motion with respect to Plaintiff's claim predicated on violations of his Eighth Amendment rights. Judge Lanzillo recommended that the Defendants' motion be denied in all other respects.

Plaintiff's objections to the R&R were due to be filed no later than February 25, 2021. As of this date, no objections have been received.

After *de novo* review of the Complaint and documents in the case, together with the Defendants' motion, Plaintiff's response thereto, and the Magistrate Judge's report and recommendation, the following order is entered:

NOW, this 3rd day of March, 2021, IT IS ORDERED that the Defendants' motion to dismiss the complaint, ECF No. [17], shall be, and hereby is, GRANTED insofar as it relates to Plaintiff's §1983 claim alleging the violation of his Eighth Amendment rights. In all other respects, the motion shall be, and hereby is, DENIED.

IT IS FURTHER ORDERED that the report and recommendation of Magistrate Judge Lanzillo, issued on February 8, 2021 (ECF No. [30]), is adopted as the opinion of the Court.


SUSAN PARADISE BAXTER
United States District Judge